

## § 981.85

months of the succeeding crop year. No later than the fifth month the amount not expended from assessments collected for administrative-research in the previous crop year shall be retained in the operating reserve fund. Any amounts, not credited pursuant to § 981.41 for a crop year may be used by the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the marketing promotion portion of the operating reserve fund. Any funds in each portion of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used to reduce the assessment rate of the subsequent crop year, as the Board may determine. Each handler's share of a refund shall be the amount by which his payment of assessments exceeds his pro rata share of the two major classifications of Board expenses. For the purpose of computing any refund from the marketing promotion portion, each handler's payment of assessments shall include any amount credited to the handler pursuant to § 981.41. In lieu of a refund, each handler may have the amount due him credited to his assessment obligation of the crop year in which the amount would be refunded.

(c) *Reserves.* The Board may maintain an operating reserve fund consisting of an administrative-research portion and a marketing promotion portion. The amount in each portion shall not exceed approximately six-months' budget for the activity area or such lower amount as the Board may establish with the approval of the Secretary: *Provided*, That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced to the extent practicable from assessments subsequently collected for the crop year.

(d) *Disposition of funds upon termination.* Any money collected from as-

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sessments hereunder and remaining unexpended in possession of the Board upon the termination of this part shall be distributed in such manner as the Secretary may direct.

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976; 61 FR 32921, June 26, 1996]

### MISCELLANEOUS PROVISIONS

#### § 981.85 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

#### § 981.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

#### § 981.87 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.